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UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 JOHN JACOB OLIVAS,

17 Defendant.

No. ED CR 18-231-JGB

GOVERNMENT'S OPPOSITION TO
DEFENDANT JOHN JACOB
OLIVAS' EX PARTE, IN CAMERA
APPLICATION FOR AN ORDER
CONTINUING THE TRIAL DATE

**CURRENT TRIAL DATE: 12-3-2019 at
9:00 a.m.**

19
20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorneys Julius J. Nam and
23 Eli A. Alcaraz, hereby files its opposition to defendant JOHN JACOB
24 OLIVAS' Ex Parte, In Camera Application seeking a continuance of the
25 trial date, filed on October 7, 2019 (Dkt. 36).

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1 This opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 Dated: October 8, 2019

Respectfully submitted,

5 NICOLA T. HANNA
6 United States Attorney

7 BRANDON D. FOX
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/
11 JULIUS J. NAM
12 ELI A. ALCARAZ
13 Assistant United States Attorneys

14 Attorneys for Plaintiff
15 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 7, 2019, defendant JOHN JACOB OLIVAS ("defendant") filed an Ex Parte Application to file an application in camera, to seek a continuance of the December 3, 2019 trial date. Based on communications with defense counsel, the government understands the proposed in camera document to seek a continuance of the trial to June 30, 2020.¹ Both the application to file in camera and the request for a continuance should be denied. To do otherwise would substantially prejudice the charged victims and the government and run counter to the principle of administration of justice without unreasonable delay. For the reasons set forth below, this second attempt in a year by defendant to continue the trial just before the pretrial motions deadline, over the objection of the charged victims, should be denied. Further, the government requests that the Court deny defendant's request for an in camera filing.

II. FACTS AND PROCEDURE

A. Facts

This is a case about a federal agent's abhorrent abuse of his official power to control, threaten, intimidate, manipulate, sexually assault, and silence his intimate partners.

Between August 2011 and November 2012, while defendant was entrusted with the power and position of a Special Agent with Homeland Security Investigations ("HSI"), defendant used his official authority to threaten, intimidate, and physically and sexually

¹ On October 4, 2019, counsel for defendant informed the government via email that the defense was seeking a trial date of June 30, 2020.

1 assault Victim 1 and Victim 2, with whom defendant had intimate
2 relationships in August 2011 through January 2012 and March 2012
3 through November 2012, respectively. Repeatedly, defendant would
4 prevent the victims from reporting defendant's violent and abusive
5 behavior to the authorities by, inter alia, (1) telling them no law
6 enforcement officer would believe the victims because he was an HSI
7 agent, he is friends with many local police officers, no law
8 enforcement would go after another law enforcement officer, and thus
9 defendant's criminal conduct was "invisible" to law enforcement,
10 (2) calling and pretending to call the local law enforcement to ask
11 to ignore any calls from the victims, and (3) brutally assaulting the
12 victims on multiple occasions, which caused the victims to remain
13 silent about defendant's abhorrent criminal conduct toward them.
14 Defendant then used his official power and authority to attempt to
15 rape Victim 1 in or about January 2012 and rape Victim 2 twice, in or
16 about September 2012 and on or about November 9, 2012.

17 By grossly abusing his power in such a manner, defendant
18 violated the victims' constitutional rights--namely, the right to be
19 free from deprivation of liberty without due process of law,
20 including the right to bodily integrity.

21 1. Victim 1

22 a. *Threats and intimidation using color of law*

23 Defendant and Victim 1 met in or about August 2011 and began
24 dating. Within about a month into their relationship, defendant
25 turned violent toward Victim 1, used his law enforcement authority
26 and connections to prevent Victim 1 from reporting his criminal
27 conduct, and threatened to use his official powers to arrest her,
28 remove her children from her, and kill her. On multiple occasions,

1 defendant squeezed Victim 1's face to the point of giving her two
2 black eyes, choked her to the point of nearly passing out, grabbed
3 her arms to the point of bruising, slapped her across the mouth, and
4 threw her violently against the walls.

5 After Victim 1 threatened to call the police, defendant told her
6 that he was the police, nothing could ever happen to him, and his
7 abusive conduct was always going to be "invisible" to local law
8 enforcement because he too was law enforcement. If Victim 1 were to
9 report, defendant said the police would believe him over her, he
10 could get her arrested instead, and the arrest would result in
11 Victim 1 losing custody of her children. Defendant also told
12 Victim 1 that he could make her lose her children "in a heartbeat" by
13 using defendant's official authority. At another time, defendant
14 told Victim 1 that he could make her "disappear," and implied that he
15 could use a confidential informant ("CI") to make that happen.
16 Defendant would also routinely tell Victim 1 that he had access to
17 her Facebook account through his work as an HSI agent, and that
18 defendant monitored his ex-wife's electronic communications through
19 work. Defendant's use and exercise of his official power toward
20 Victim 1 were so profound and pervasive that Victim 1 felt she had no
21 choice but remain silent about defendant's abusive criminal conduct
22 toward her.

23 *b. Attempted rape using color of law*

24 In January 2012, defendant again exerted his official power over
25 Victim 1, this time to attempt to rape Victim 1 in the residence they
26 shared. After Victim 1 refused to have sexual intercourse, defendant
27 held her down by the shoulders using his considerable advantage in
28 weight and physical power and attempted to have sexual intercourse

1 with her. Victim 1 emphatically told defendant that she did not want
2 to have sex with him, but defendant kept holding her down. Victim 1
3 began screaming but defendant persisted and proceeded to attempt to
4 remove Victim 1's clothing. It was not until Victim 1 continued to
5 scream and began kicking defendant in his stomach area that he
6 relented and allowed Victim 1 to leave. After this incident,
7 Victim 1 ended her relationship with defendant.

8 Victim 1 never reported defendant's attempted rape of her or
9 defendant's abusive conduct toward her to the police because she
10 remained in fear of what defendant would do in retaliation and she
11 felt the police would not help her based on defendant's past
12 statements about his power and authority as a federal agent.
13 Victim 1 described defendant's conduct only after special agents from
14 the Federal Bureau of Investigation identified her as a previous
15 intimate partner of defendant's and interviewed her. Victim 1
16 remains deeply affected and traumatized by defendant's abuse of her
17 using his official powers, lives in fear of defendant and his threats
18 of retaliation, and thus desires a speedy resolution of this matter.

19 2. Victim 2

20 a. *Threats and intimidation using color of law*

21 Defendant and Victim 2 met in or about March 2012. On their
22 first date, defendant identified himself as a federal agent and
23 showed his official credentials to her. In addition, defendant
24 prominently displayed his department-issued tactical vest and other
25 agency-issued equipment in the back seat of his car. At the
26 conclusion of their first date, Victim 2 was under the impression
27 that defendant was a member of a federal Special Weapons and Tactics
28

1 (or SWAT) team, even though that was not true. The two began dating
2 within about a week.

3 Approximately five to six weeks in their relationship, defendant
4 became physically abusive towards Victim 2. Defendant would throw
5 objects at Victim 2, physically restrain her by pinning her against
6 walls, pull her hair, and choke her to the point where she would
7 nearly pass out. During one incident, on November 4, 2012, defendant
8 grabbed and squeezed Victim 2's body with enough force that she
9 fractured her ribs and had to be put in a binder. Defendant also
10 pulled his HSI-issued service pistol on Victim 2 on at least two
11 occasions, pointed the gun at her head with his finger on the
12 trigger, and threatened to kill her. Defendant also threatened to
13 shoot Victim 2's father in the head.

14 Defendant used his position as a federal agent to intimidate
15 Victim 2 into not reporting any of his physical or sexual attacks to
16 law enforcement officials. After physical attacks, defendant would
17 take phones away from Victim 2, keep Victim 2's car blocked using
18 defendant HSI vehicle, and tell Victim 2 that even if she filed a
19 report, the police would not believe her word over his. Defendant
20 would also tell her that he was "well-connected" to local police
21 management and, as a special agent, that he had more authority than
22 local police officers. After physical attacks against Victim 2,
23 defendant would appear to call "Sector" (HSI's version of a watch
24 commander), and would ask to be connected to the watch commander. He
25 would then get a call back from someone Victim 2 believed to be a law
26 enforcement officer. Defendant once even threatened to send a CI to
27 Victim 2's house to "put [her] in a hospital." Defendant also
28

1 threatened to enter false criminal charges against Victim 2 on law
2 enforcement databases using HSI computer.

3 Moreover, defendant told Victim 2 that he could access her
4 Facebook messages through his government computer, and that he used
5 his government computer to keep track of one of his ex-wives. He
6 also told Victim 2 that he "ran" all of her friends using HSI
7 resources to gain information about them.

8 Defendant's threats and claims regarding his power and position
9 contributed to Victim 2's fear of him. And defendant's flaunting of
10 his authority as a federal agent and connection to local law
11 enforcement discouraged Victim 2 from reporting instances of physical
12 and sexual abuse to the police. She believed that defendant was
13 above the law, untouchable by the criminal justice system, and well-
14 positioned to retaliate against her and her family if she reported
15 his abuse to law enforcement.

16 *b. Two charged incidents of rape using color of law*

17 It was within that current of violence, threats, intimidation,
18 and coercion through official power and authority that defendant
19 raped Victim 2 at least three times between September and November of
20 2012. Two of the rapes are charged in the indictment.

21 The first rape occurred in late September 2012, shortly after
22 defendant held a gun to Victim 2's head. After a night out,
23 defendant became enraged when he perceived other men to be catcalling
24 Victim 2. Sitting in the passenger's seat while Victim 2 was driving
25 home, he pulled his HSI-issued service pistol and put it to
26 Victim 2's head. He asked her, "What would you do if I pulled the
27 trigger?" After they arrived at home, he pinned Victim 2 to the
28 ground of the living room and forcefully raped her despite Victim 2

1 emphatically telling defendant that she did not want to have sex with
2 him. When Victim 2 tried to get up off the floor and away from
3 defendant, he began dragging her around the carpet. As a result, she
4 sustained an injury on her arms and began bleeding. Defendant yelled
5 at Victim 2 for bleeding on the carpet and continued to rape her.
6 During this rape, defendant's HSI-issued service pistol was on a
7 table directly above Victim 2's head within defendant's reach and
8 Victim 2's view. Victim 2 did not report this rape to law
9 enforcement because defendant had led Victim 2 to believe that law
10 enforcement would protect defendant and defendant would retaliate
11 against her for reporting him.

12 The second rape occurred on November 9, 2012. Few days earlier,
13 defendant had fractured Victim 2's ribs by grabbing and squeezing her
14 tightly while preventing her from leaving their residence. On
15 November 9, defendant wanted to have sex, but Victim 2's ribs hurt
16 too much so she refused. Defendant responded, "Shut the fuck up" and
17 proceeded to force vaginal intercourse with Victim 2 while she cried
18 in pain. During the rape, defendant's HSI-issued service firearm was
19 on the dresser next to the bed where he raped Victim 2--within
20 defendant's easy reach and Victim 2's clear view. Victim 2 did not
21 report this rape to law enforcement because defendant had led
22 Victim 2 to believe that law enforcement would protect defendant and
23 defendant would retaliate against her for reporting him.

24 *c. Additional incident of uncharged rape*

25 In addition to the two instances of rape charged in the
26 indictment, defendant raped Victim 2 for the third time on November
27 12, 2012. That night, Victim 2 went to bed after taking a dose of
28 Ambien as a sleeping aid. She woke up later that night bleeding from

1 her anus and without the underwear she had on when she went to bed.
2 Victim 2 had no recollection of what took place while she was
3 sleeping, but she later learned from a video recording that defendant
4 sent to her cellular telephone that defendant had sodomized her and
5 recorded the rape, while she was semi-conscious. After sending
6 Victim 2 the video of the rape, defendant threatened to send a copy
7 to Victim 2's father. Victim 2 understood this threat as yet another
8 attempt to intimidate and blackmail her into silence.

9 * * *

10 To this day, Victim 2 lives with the trauma caused by
11 defendant's abuse of her using his official powers, lives in fear of
12 defendant and his threats of retaliation, and thus desires a speedy
13 resolution of this matter.²

14 **B. Procedure**

15 This case was indicted on August 1, 2018 (Dkt. 1). On September
16 21, 2018, upon the parties' stipulation, the Court continued the
17 trial date to May 28, 2019. On or about April 12, 2019, over the
18

19 ² Three additional individuals with whom defendant has been in
20 intimate relationships over the past two decades have offered
21 strikingly similar descriptions of defendant's violent and abusive
22 conduct, including through the use of official power and authority.

23 Two additional individuals have provided vivid descriptions of
24 violent rape and physical assault by defendant in the course of their
25 relationships while defendant was in the military and working as a
26 correctional officer with the federal Bureau of Prisons.

27 Another individual has provided details of violent physical
28 assaults, use of official power to intimidate and prevent reporting,
and use of service pistol to threaten.

The government anticipates introducing one or more of these
individuals as victim witnesses at trial under Rules 413 and/or
404(b). Although they are not charged victims in this case, their
rights to be free from unreasonable delay of the proceedings in this
matter are significantly affected by yet another continuance of the
trial date.

1 government's objections, the Court granted defendant's in camera
2 request to continue the trial date to December 3, 2019.

3 Deputy Federal Public Defender ("DFPD") Angela C.C. Viramontes
4 was appointed to represent defendant on August 15, 2018 at
5 defendant's initial appearance (Dkt. 9). On November 28, 2018, DFPD
6 Cuauhtemoc Ortega made his appearance for defendant (Dkt. 19). On
7 February 13, 2019, DFPD Caroline Hahn made her appearance for
8 defendant (Dkt. 20). On October 4, 2019, DFPD Craig Harbaugh made
9 his appearance for defendant (Dkt. 35). On October 7, 2019, after
10 defendant filed his in camera request for another continuance of the
11 trial date (Dkt. 36), DFPD Hahn withdrew from this case (Dkt. 37).

12 The government has made six discovery productions to the defense
13 in this case on four dates. The first two productions of August 28,
14 2018 and November 26, 2018 consisted of bates ranges from 1 through
15 30,081, as well as files outside of bates numbering. The third and
16 fourth productions of May 20, 2019 consisted of bates ranges from
17 30,082 through 31,410. The fifth production of August 8, 2019
18 consisted of bates ranges from 31,411 through 31,527.

19 The sixth production also of August 8, 2019 consisted of bates
20 ranges from 31,528 through 100,714 (comprised of extraction reports
21 of previously produced three cell phone contents), as well as files
22 outside of bates numbering that corresponded to the information in
23 the extraction reports. As the government informed the defense on
24 August 8, 2019 regarding the sixth production, the government is not
25 aware of any new potentially and arguably relevant information in
26 that production. That is because the sixth production contained a
27 re-production of the relevant contents of the same cellular
28 telephones whose information was previously produced on August 28,

2018. Whereas on August 28, 2018 the government produced only information that was discoverable under Rule 16, Brady, and Giglio, in an exercise of caution, the sixth production included forensic copies of the entirety of the cellular telephones, well beyond the government's discovery obligations.

III. AN IN CAMERA FILING IS INAPPROPRIATE

The government objects to defendant's apparent request to continue the trial via an in camera filing. First, an in camera filing prevents the victims in this case from exercising their rights guaranteed by the Crime Victim Rights Act. Because this is the second in camera filing for a continuance in a year, the victims have woefully inadequate transparency they are owed, and, more importantly, deserve. An in camera filing prevents the government from effectively communicating with each victim to allow the victim to vindicate her rights, including "[t]he right to reasonable, accurate, and timely notice of any public court proceeding," "[t]he right not to be excluded from any such public court proceeding," and "[t]he right to proceedings free from unreasonable delay." 18 U.S.C. §§ 3771(a)(2), (3), (7).

The government has been in contact with the victims in this case and knows that the charged victims have strong objections to any continuance especially because the trial was continued once this year over objection. An in camera filing that seeks to continue the trial date to a date unspecified to the victims and for reasons unknown to the victims significantly impairs the victims' ability to participate in the proceedings. Second, proceeding in camera prevents the government from knowing essential information such as the requested date and why a continuance is necessary and, accordingly, hinders the

1 government's ability to respond and oppose defendant's request. In
2 all fairness, the government should be given a meaningful opportunity
3 to be heard.

4 **IV. A LENGTHY CONTINUANCE TO JUNE 30, 2020 IS UNREASONABLE**

5 Defendant's request for a continuance of the trial for nearly
6 seven months to June 30, 2020, knowing well that the victims'
7 objections, is unreasonable and should be denied.

8 First, to the extent the defense's request for a continuance is
9 based on the October 7, 2019 appearance of DFPD Harbaugh in this case
10 and his need to review the discovery and conduct further
11 investigation, this should not be convincing for the Court. Ms.
12 Viramontes is an experienced counsel who has had ample opportunity to
13 review the discovery from the beginning of this case and has overseen
14 the investigation into potential defenses over the past 14 months.
15 She provides continuity and knowledge of the case within the defense
16 team that favors denying defendant's request. DFPD Ortega, another
17 seasoned attorney who made his appearance in November 2018, has had
18 nearly a year to review the discovery and work with Ms. Viramontes to
19 prepare for trial. Further, when defendant last requested in camera
20 for a continuance to December 3, 2019 (just as the motions deadline
21 was approaching within a week), the defense explained to the
22 government that Ms. Hahn's addition to this case in February and her
23 need to review the discovery was a principal justification for the
24 defense's request for a continuance. For the past eight months, DFPD
25 Hahn has been the primary counsel with whom the government has
26 interacted on this case and disclosed and discussed matters central
27 and relevant to the case. Now, immediately after DFPD Harbaugh was
28 added to the case on October 4, 2019, DFPD Hahn withdrew just as

1 defendant filed the instant application to continue the trial date
2 (Dkt. 37). This pattern of changing attorneys within the Office of
3 the Federal Public Defender--as the pretrial motions deadline of
4 October 21, 2019 is fast approaching--then seeking a continuance
5 because of the need to review discovery and conduct new research and
6 investigation that the defense apparently have not engaged in, does
7 not serve the interest of justice and causes great prejudice to the
8 victims and the government.

9 Second, the government has already started trial preparations,
10 including meetings, starting in August 2019, with the charged victims
11 concerning their anticipated trial testimony. These meetings have
12 been emotionally and mentally taxing on the victims and amounts to
13 them essentially reliving their traumas in this case. For the second
14 time this year, their very strong desire to vindicate their rights is
15 in jeopardy. The victims who remain deeply affected by defendant's
16 criminal conduct have stated to the government that they would like
17 the trial to proceed on December 3, 2019 so that they can find
18 resolution to the trauma that they have been living and reliving over
19 the past seven to eight years. The government thus understands the
20 victims would find a continuance to the middle of 2020 intolerable.
21 In addition, given that the government's trial preparation has begun
22 in earnest, a third lengthy continuance also prejudices the
23 government. If the Court were to continue the trial again, the
24 government likely would seek a pretrial order that the defense cannot
25 attack the credibility of the victims by arguing that their memories
26 have faded due to time, a delay that would amount to more than one
27 year arising from defendant's requests. The government believes that
28 the December 3, 2019 trial date should remain.

1 By December 3, 2019, the defense will have had more than 16
2 months to prepare for trial, which is more than adequate for a case
3 such as this. Since April 2019, the defense has been well aware of
4 the government's and especially the victims' strong objections to
5 additional delays in the proceedings in this case. Yet the defense
6 appears to be unconcerned with the victims' right to be free from
7 unreasonable delay as it reorganizes the defense team yet again and
8 asks for yet another lengthy continuance. The government asks the
9 Court to consider the victims' ardent desire for a speedy resolution
10 of this case and deny defendant's unreasonable request.

11 **V. CONCLUSION**

12 The Court should deny defendant's request for a continuance of
13 the December 3, 2019 trial date to June 30, 2020, as well as
14 defendant's request to file the continuance request in camera.
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